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# Letters to The Times

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## Nixon's Views on U-2

### Statement in Debate Upholding Overflight Is Examined

*The writer of the following letter is Professor of Law, Columbia University.*

TO THE EDITOR OF THE NEW YORK TIMES:

In his Oct. 7 television debate with Senator Kennedy, Vice President Nixon made this statement: "Whenever we do anything that's wrong we can express regrets. But when the President of the United States is doing something that's right, something that is for the purpose of defending the security of this country against surprise attack, he can never express regrets or apologize to anybody, including Mr. Khrushchev."

To at least one teacher of international law this is a deeply disturbing statement. The planned flight of the U-2 over Soviet territory was a violation of generally accepted rules on territorial sovereignty. Certainly the United States would have strongly protested against a similar flight over its territory.

Although space photography may make national sovereignty over air space soon partly obsolete, it is a firm part of present-day international law and it is particularly cherished by the many medium and smaller nations for which it is the principal defense against intrusions from more powerful neighbors.

Hence the U-2 flight upset some of America's smaller allies as much as it did neutrals and hostile nations.

### Considered Position

Mr. Nixon's statement was made many months after the U-2 incident, and it must therefore be taken to reflect a considered position. Yet what does it mean? It could mean that the action of the Chief Executive of this country automatically heals any breach of law. Domestically this is of course an untenable constitutional doctrine. But even if it were correct, it could not internationally make an illegal action lawful.

More likely Mr. Nixon's statement was a variation of the old theme of "right or wrong my country." In

that sense it will have wide appeal: it will please those who regard international law altogether as a farce, a hypocritical disguise of power aspirations, or at best an appeal to international moral sentiment, to be used and discarded as the nation's interests require. It will also appeal to those who consider any expression of regret to the Soviet Union as unpatriotic, especially so after Mr. Khrushchev's provocative gestures of recent months.

Yet the Vice President has been a leader in the movement for the extension of the rule of law in international affairs. But readiness to submit a wider range of disputes to impartial judgment does not go well together with denying that a clear violation of international law was "right" as distinct from "expedient."

### Moral Leadership

Clarity on this issue is more than a matter of ideology or morality. It is perfectly consistent with Communist theory to regard international law as a capitalist instrument, to be used or discarded at will. For the West, however, respect for international law and orderly development, through legal rather than revolutionary change, is a matter of profound importance. It is also a vital factor in the struggle for moral leadership in a world in which the collective opinion of the smaller—and mostly uncommitted—nations is increasingly crucial.

The United States gained greatly when it proposed to submit the RB-47 incident to international investigation. And the U. S. S. R.'s refusal to do so has probably convinced most of the world that the charge of territorial violation is unfounded.

It is much to be hoped that Mr. Nixon will clarify his position in the remaining debates.

W. FRIEDMANN.

New York, Oct. 10, 1960.

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